

Mark F Anderson (SBN 44787)
Kemnitzer, Anderson, Barron & Ogilvie LLP
445 Bush St, 6th Floor
San Francisco, CA 94108
Phone: 415.861.2265
Fax: 415.861.3151

Attorneys for Plaintiff Hung Tran

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

HUNG TRAN,

Plaintiff,

v.

AMERICAN EXPRESS TRAVEL
RELATED SERVICES COMPANY,
INC;
EXPERIAN INFORMATION
SOLUTIONS, INC. and
EQUIFAX INFORMATION
SERVICES LLC,

Defendants.

Case No. C 05 4616 SC

**STIPULATED PROTECTIVE
ORDER**

Judge: Honorable Samuel Conti

Subject to the approval of this Court and the provisions of Rule 26 of the Federal Rules of Civil Procedure, the Parties by and through their respective counsel of record, hereby stipulate and agree that, with respect to any information, documents, or things obtained by any Party to these actions during settlement negotiations or in response to any discovery the following Stipulated Protective Order shall govern:

1. PURPOSE AND LIMITATIONS

The purpose of this Stipulated Protective Order is to allow the Parties to have reasonable access to sensitive commercial, financial, and confidential information from other Parties while protecting the confidentiality or privacy of that

1 information. The Parties acknowledge that this Stipulated Protective Order does not
2 confer blanket protections on all disclosures or responses to discovery and that the
3 protection it affords to Discovery Materials (defined below) extends only to the
4 limited information or items that are entitled under the applicable legal principles to
5 treatment as confidential. The Parties further acknowledge, as set forth in Section 10,
6 below, that this Stipulated Protective Order creates no entitlement to file confidential
7 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
8 followed and reflects the standards that will be applied when a Party seeks
9 permission from the Court to file material under seal.

10 **2. DEFINITIONS**

11 2.1 Party/Parties. “Party” or “Parties” means Hung Tran, American
12 Express Travel Related Services Company, Inc.; Experian Information Solutions,
13 Inc.; and Equifax Information Services, LLC including all of their officers, directors,
14 employees, consultants, retained experts, agents, and outside counsel (and their
15 support staff).

16 2.2 Discovery Material. “Discovery Material” means any
17 information, document, or tangible thing, upon which any expression,
18 communication, or representation has been recorded by any means, or response to
19 any discovery request, including by way of example, document requests,
20 interrogatories, requests for admissions, notices of deposition, requests to inspect,
21 initial disclosures, subpoenas and any other similar materials, or portions thereof.

22 2.3 Settlement Materials: “Settlement Materials” means any
23 information, document or tangible thing provide to the Receiving Party for the
24 purposes of settlement negotiations.

25 2.4 Confidential Information. “Confidential Information” means any
26 (1) Settlement Materials or (2) Discovery Materials Producing Party designates as
27 sensitive or proprietary business or financial information, personal information, or
28

1 information furnished to it in confidence by any third party, which information is not
2 known to the general public.

3 2.5 Receiving Party. “Receiving Party” means a Party to the action
4 or any third party who receives Discovery Material or Settlement Material from a
5 Producing Party.

6 2.6 Producing Party. “Producing Party” means a Party to the action
7 or any third party who produces or otherwise makes available Discovery Material or
8 Settlement Material to a Receiving Party.

9 2.7 Designating Party. “Designating Party” means a Party to the
10 action or any third party who provides Settlement Materials to one or more Parties or
11 third parties or who produces Discovery Materials that it designates as “Confidential
12 Information.”

13 2.8 Counsel. “Counsel” means counsel of record, an employee
14 in-house counsel of a Party, and their secretarial and support personnel and other
15 assistants to whom it is necessary to disclose Confidential Information for the
16 purpose of this action.

17 2.9 Expert. “Expert” means a person with specialized knowledge or
18 experience in a matter pertinent to the litigation who has been retained by one Party
19 or its Counsel to serve as an expert witness.

20 2.10 Trial Preparation Materials. “Trial Preparation Materials” means
21 documents and materials such as pleadings, court papers and briefs, exhibits,
22 depositions, interrogatories, and the like, and summaries thereof or notes pertaining
23 thereto.

24 **3. SCOPE**

25 The protection conferred by this Stipulated Protective Order covers not
26 only Confidential Information, but also any information copied or extracted
27 therefrom, as well as copies, excerpts, summaries, or compilations thereof, plus
28

1 testimony, conversations, or presentations by Parties or Counsel to or in Court or in
2 other settings that might reveal Confidential Information.

3 **4. DESIGNATION OF CONFIDENTIAL INFORMATION**

4 4.1 Designation in General. Any Party or non-party may designate as
5 “CONFIDENTIAL,” by so marking any Discovery Material– and any copies,
6 abstracts, excerpts or analyses thereof – given, used, served or produced by the Party
7 or non-party in connection with this action, including without limitation in response
8 to formal discovery demands or subpoenas or in compliance with the initial
9 disclosure requirements prescribed by Federal Rules of Civil Procedure, Rule 26(a),
10 that the Designating Party or non-party in good faith believes to contain, reflect,
11 regard, or disclose any confidential, non-public, or proprietary business or financial
12 information.

13 4.2 Inadvertent Failure to Designate. A Party or non-party that
14 inadvertently fails to mark an item as Confidential Information at the time it is given,
15 used, served or produced may correct its failure in writing, accompanied by
16 substitute copies of each item, container or folder, appropriately marked as
17 Confidential Information. Failure to designate is not a waiver of the confidential
18 nature of the material.

19 4.3 Settlement Negotiations. All documents provided to any Party in
20 connection with any settlement negotiations, whether marked so or not, are
21 Confidential Information and all copies must be returned to the Designating Party
22 immediately upon request. The Receiving Party agrees not to challenge the
23 confidential designation of any Settlement Materials.

24 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 5.1 Meet and Confer. Except as provided in 4.3, the acceptance by a
26 Receiving Party of Confidential Information shall not constitute an admission or
27 concession or permit an inference that the Confidential Information is, in fact,
28 confidential. Should a Receiving Party object in good faith to such designation, that

1 Party must notify the Designating Party or Parties in writing of such objection,
2 specifying the basis thereof. The Parties shall then negotiate in good faith to attempt
3 to resolve their dispute regarding the confidentiality of the subject materials. In
4 conferring, the Receiving Party must explain the basis for its belief that the
5 confidentiality designation was not proper and must give the Designating Party an
6 opportunity to review the designated material and to explain the basis for the
7 designation.

8 5.2 Judicial Intervention. Should such meet-and-confer efforts fail,
9 the Designating Party may then apply to the Court for a protective order covering the
10 designated information within twenty (20) days from the receipt of such written
11 notice from the Receiving Party. Or the Receiving Party may file and serve a motion
12 under Civil Local Rule 7 that identifies the challenged material and sets forth in detail
13 the basis for the challenge. Each such motion must be accompanied by a competent
14 declaration that affirms that the movant has complied with the meet and confer
15 requirements and that sets forth with specificity the justification for the designation
16 provided by the Designating Party. The Designating Party shall bear the burden of
17 establishing the confidentiality of any material (except for Settlement Materials as
18 provided *supra* ¶ 4.3 which is deemed confidential) designated as Confidential
19 Information. The information which is the subject of such dispute shall continue to
20 be treated as confidential subject to this Stipulated Protective Order for a period of
21 twenty (20) court days following written notice of objection unless a motion for a
22 protective order is filed within that time, in which case the information shall be
23 treated as confidential pending the outcome of such motion. In the absence of such a
24 motion, the documents or information shall not be treated as confidential upon the
25 expiration of twenty (20) court days after written notice of objection.

26 **6. USE OF CONFIDENTIAL MATERIAL**

27 6.1 General. No Confidential Information shall be made public by
28 the Receiving Party or divulged to anyone other than as set forth herein. Absent a

1 specific order by the Court or if the Designating Party otherwise agrees, once
2 designated as Confidential Information, such materials and information shall be used
3 by the Parties solely in connection with this litigation, and not for any other purpose,
4 including any business, competitive, or governmental purpose or function.

5 6.2 Advice of Counsel. Nothing under this Stipulated Protective
6 Order shall bar or otherwise restrict Counsel from rendering advice to a Party with
7 respect to this action, and in the course thereof, relying in a general way upon
8 examination of any Confidential Information. However, in rendering such advice
9 and in otherwise communicating with a Party, such Counsel shall not disclose the
10 contents of any Confidential Information contrary to the terms or intent of this
11 Protective Order.

12 6.3 Right to Disclose. Nothing in this Stipulated Protective Order
13 shall preclude any person or entity from disclosing or using, in any manner or for any
14 purpose, any information or document if that information or document is lawfully
15 obtained from a third party under no obligations of confidentiality with respect
16 thereto and having the right to disclose such information. Similarly, the terms of this
17 Stipulated Protective Order shall in no way affect a Party's right to reveal or disclose
18 to anyone any information designated by that Party itself as CONFIDENTIAL
19 INFORMATION. Nothing herein shall prohibit a Party from disclosing
20 CONFIDENTIAL INFORMATION to the person the document identifies as the
21 author, addressee or recipient of such material.

22 7. **ACCESS TO CONFIDENTIAL INFORMATION**

23 7.1 Permissible Disclosures. Confidential Information shall be
24 treated by each Receiving Party as confidential unless and until the Court rules to the
25 contrary or the Designating Party agrees otherwise. Unless and until the Court rules
26 or the Designating Party otherwise agrees, and except as set forth in Paragraph 7.2
27 herein, access to or disclosure of Confidential Information shall be limited to the
28 following persons and the following persons are bound by the terms of this Stipulated

1 Protective Order, subject to the qualification provisions of Paragraph 7.2 herein:

2 a. The Court and those employed by the Court, in which event such
3 information shall be filed under seal (and kept under seal until further order of
4 the Court);

5 b. Each of the named Parties to the litigation who has, through that
6 Party's respective Counsel, signed this Stipulated Protective Order (or who
7 has accepted the terms of this Stipulated Protective Order by the Party's
8 counsel's execution of Appendix A hereto), including any representative of
9 the Party (officers, directors, partners, employees) assisting in the prosecution
10 or the defense of the litigation, and such Party's counsel, including the clerical,
11 secretarial, and paralegal staff employed by such counsel;

12 c. Court reporters and employees of court reporters engaged by
13 counsel to record and transcribe testimony in this litigation, and translators
14 engaged for any purpose in the litigation;

15 d. Experts retained for the purpose of assisting counsel in the
16 litigation to the extent reasonably necessary for the litigation of this action;
17 provided, however, that in all such cases the person to whom disclosure is
18 made must signify assent to the terms of this Stipulated Protective Order by
19 executing the acknowledgement attached as Appendix A hereto, indicating
20 that he or she has read and understands this Stipulated Protective Order and
21 has agreed to be bound by its terms and has agreed to be bound by its terms and
22 providing a copy of the signed acknowledgment to the Designating Party; and

23 e. Persons from whom testimony is taken or is to be taken in the
24 litigation, either in a deposition or at trial, provided that Confidential
25 Information may be disclosed to such persons only in the preparation for,
26 review of, or in the course of his or her testimony, and that such person shall
27 not retain such Confidential Information after his or her testimony is
28 concluded and that the Designating Party has stipulated that such witness has

1 a need to know this information; provided, however, that in all such cases the
2 person to whom disclosure is made must first signify assent to the terms of
3 this Stipulated Protective Order by executing the acknowledgement attached
4 as Appendix A hereto, indicating that he or she has read and understood this
5 Stipulated Protective Order; and

6 7.2 Other Persons. Counsel desiring to qualify a person or persons to
7 receive Confidential Information under paragraph 7.1(c), (d), or (e) shall first obtain
8 from each such person a signed undertaking in the form of Appendix A hereto.

9 7.3 Additional Parties. In the event that additional persons become
10 parties to this action, they shall not have access to Confidential Information produced
11 by or obtained from any Party or nonparty until the newly joined party or his or her
12 counsel executes the acknowledgment attached as Appendix A hereto, indicating to
13 all other Parties that he or she has read this Stipulated Protective Order and agrees to
14 be bound by its terms.

15 7.4 Disclosure Pursuant to Subpoena. Should any non-party serve a
16 subpoena calling for the production of any Confidential Information on any Party or
17 Counsel for a Party who has received such information, the subpoenaed Party in such
18 instance shall provide notice in writing via facsimile to the Designating Party
19 immediately and in no event more than three days after Receiving the subpoena.
20 Such notification must include a copy of the subpoena. It shall be the obligation of
21 the Designating Party, prior to the response date on the subpoena, to seek a protective
22 order or any other appropriate relief from the Court if the Designating Party wishes to
23 maintain the confidentiality of the material. A Designating Party that fails to seek
24 judicial relief to preclude the disclosure of any Confidential Information in response
25 to a subpoena shall be deemed to have waived any claim of confidentiality with
26 respect to such material.

27 7.5 Objection to Disclosure to Other Persons. Should any Party seek
28 to disclose Confidential Information to such other persons not authorized to receive

1 Confidential Information pursuant to paragraph 7(a-f), said Party shall identify in a
2 written notice to the Designating Party (1) the specific Confidential Information; (2)
3 the purpose of such disclosure; (3) the person(s) to receive the Confidential
4 Information, by name, address and telephone number; (4) counsel for that person(s),
5 by name address and telephone number; and (4) any litigation, administrative
6 proceeding or proceeding, by caption and docket number. This written notice will be
7 provided at least sixty (60) days in advance of the intended date of disclosure. The
8 Designating Party in such instance shall provide any objection to such disclosure in
9 writing notice to the other Party within thirty (30) after receipt of that Party's intent to
10 disclose. No Confidential Information shall be disclosed to that person(s) until the
11 validity of the objection has been resolved, either by an agreement between the
12 Parties or by order of the Court. The objecting party shall have the burden of
13 obtaining a court order on the controversy. If no objection is made by the Designating
14 Party, then the identified Confidential Information may be divulged by the Receiving
15 Party to the identified person upon his or her execution of the acknowledgement
16 attached as Appendix A hereto, indicating that he or she has read and understood this
17 Stipulated Protective Order and has agreed to be bound by its terms. Unless the
18 parties agree, no party may divulge CONFIDENTIAL INFORMATION to a person
19 who refuses to agree to be bound by this protective order.

20 **8. ACKNOWLEDGEMENT OF PROTECTIVE ORDER**

21 Before obtaining access to any CONFIDENTIAL INFORMATION
22 covered by this Stipulated Protective Order, each person (other than Counsel) who is
23 permitted to have access to CONFIDENTIAL INFORMATION under this
24 Stipulated Protective Order must signify assent to the terms of this Stipulated
25 Protective Order by executing the acknowledgement attached as Appendix A hereto,
26 indicating that he or she has read and understands this Protective Order and agrees to
27 be bound by its terms. If a deponent or the attorney for a deponent refuses to execute
28 the acknowledgement attached as Appendix A hereto, he or she shall be requested on

1 the deposition record to agree to the terms of this Stipulated Protective Order. Every
2 deposition witness whose appearance at deposition is obtained pursuant to the
3 process of this Court and to whom CONFIDENTIAL INFORMATION is disclosed
4 at deposition is hereby ordered (1) to maintain all CONFIDENTIAL
5 INFORMATION in confidence, and (2) not to disclose CONFIDENTIAL
6 INFORMATION to anyone other than in accordance with the terms of this Stipulated
7 Protective Order.

8 **9. HANDLING OF CONFIDENTIAL INFORMATION**

9 9.1 Deposition Transcripts. In the case of depositions and pretrial
10 proceedings, the Parties agree to provisionally treat the entire transcript of the
11 deposition or pretrial proceeding as Confidential Information. Within thirty (30)
12 days of receipt of the transcript, any Counsel may designate portions of the transcript
13 as Confidential Information by informing the reporter and other Counsel in writing of
14 such designations by page and line number. The reporter, who shall first have agreed
15 to abide by the terms of this Stipulated Protective Order, shall be instructed to seal
16 the transcript and include on the cover page the legend: "This transcript portion
17 contains information subject to a Protective Order and shall be used only in
18 accordance therewith."

19 9.2 Exclusion of Unauthorized Persons. When testimony designated
20 as Confidential Information is (or is sought to be) elicited during a deposition,
21 persons not entitled to receive such information under the terms of this Stipulated
22 Protective Order shall be excluded from attendance at the deposition of this action
23 during such time as the Confidential Information is being disclosed, unless the
24 Parties otherwise agree or the Court otherwise orders.

25 9.3 Inadvertent Production. If during document production, the
26 Producing Party inadvertently produces a document entitled to protection under the
27 attorney-client privilege, the attorney work product doctrine, or other provisions of
28 applicable law: (a) the Parties agree that the erroneous or inadvertent production

1 shall not constitute a waiver of such protection as to either the subject matter of the
2 material or as to related documents or communications; and (b) the Producing Party
3 may request the return of the inadvertently produced document at any time before the
4 commencement of trial, but no more than thirty (30) days after the document is first
5 marked as a deposition exhibit, identified as a potential trial exhibit, or otherwise
6 identified by any Party in any pleading or correspondence served on all Parties to this
7 action. Any such a request shall be made in writing, and shall identify the basis for
8 the claimed protection. If the Party (or Parties) that received the inadvertently
9 produced document agrees that the document is entitled to protection (without regard
10 to its inadvertent production), all copies of the inadvertently produced document
11 shall be returned to the producing Party or destroyed, and no reference to such
12 document shall be made in discovery, at trial, or any other manner. If the Parties do
13 not agree that the document is entitled to protection, the burden is on the producing
14 Party to file an appropriate motion with the Court within forty-five (45) days after the
15 document is first marked as a deposition exhibit, identified as a potential trial exhibit,
16 or otherwise identified by any Party in any pleading or correspondence served on all
17 Parties to this action. Further, the Parties agree that *in camera* review of such
18 documents or testimony is not a waiver of privilege.

19 9.4 Unauthorized Disclosure. If a Receiving Party learns that, by
20 inadvertence or otherwise, it has disclosed Confidential Information to any persons
21 or in any circumstance not authorized under this Stipulated Protective Order, the
22 Receiving Party must immediately (a) notify in writing the Designating Party of the
23 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
24 Confidential Material, (c) inform the person or persons to whom unauthorized
25 disclosures were made of all the terms of this Order, and (d) request such person or
26 persons to execute the acknowledge attached as Appendix A hereto.

27 **10. FILING CONFIDENTIAL INFORMATION**

28 Without written permission from the Designating Party or a court order

1 secured after appropriate notice to all interested persons, a Party may not file in the
2 public record in this action any Confidential Information. A Party that seeks to file
3 under seal any Confidential Information must comply with Civil Local Rule 79-5.

4 **11. FINAL DISPOSITION**

5 11.1 Termination of Participation in Action. Once participation in this
6 action by any person obtaining Confidential Information has been terminated or
7 otherwise concluded, all Confidential Information, **excluding information protected**
8 **by the attorney work product privilege**, in the possession of such person shall be
9 returned by such person within thirty (30) calendar days to the Counsel from whom
10 he or she obtained such Confidential Information.

11 11.2 Termination of Action. Within sixty (60) days after the final
12 termination of this action, counsel for the Receiving Party shall return all copies of
13 the Confidential Information to counsel for the Designating Party, or shall, at the
14 option of the Designating Party, destroy such Confidential Information, and certify in
15 writing that said destruction has occurred to counsel for the Designating Party.

16 **12. RIGHT TO FURTHER RELIEF - NO WAIVER**

17 12.1 Right to Further Relief. This Stipulated Protective Order shall
18 not prevent a Party from applying to the Court for relief from this Order or any of its
19 terms or provisions, or from applying to the Court for further or additional protective
20 orders.

21 12.2 Right to Assert Other Objections. Nothing in this Stipulated
22 Protective Order shall be construed as a waiver of the right of any Party to object to
23 the taking or admissibility of any testimony, the production of documents or tangible
24 things, or the admissibility of other evidence where such an objection is based on a
25 ground or grounds other than that the testimony or evidence involves
26 CONFIDENTIAL INFORMATION.

12.3 No Waiver Due to Review. Review of Confidential Information by Counsel or Experts shall not waive the confidentiality of the documents or objections to production.

13. EFFECTIVE PERIOD

The terms of this Stipulated Protective Order shall be effective and binding upon a Party upon the signature of its Counsel below. The restrictions on use of Confidential Information set forth in this Stipulated Protective Order shall survive the conclusion of this litigation and, after conclusion of this litigation, the Court shall exercise limited jurisdiction for the purpose of enforcing this Stipulated Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: August 8, 2006

Kemnitzer, Anderson, Barron & Ogilvie
LLP

By /s/ Mark F Anderson
Attorneys for Plaintiff

Dated: August 15, 2006

KIRKPATRICK STOCKTON LLP

By /s/ Garrett E Miller
Attorneys for Defendant
Equifax Information Services LLC

Dated: August 16, 2006

JONES DAY

By /s/ Xuan-Thu T. Phan
Attorneys for Defendant
Experian Information Solutions, Inc

1 Dated: August 8, 2006

Greenberg Traurig

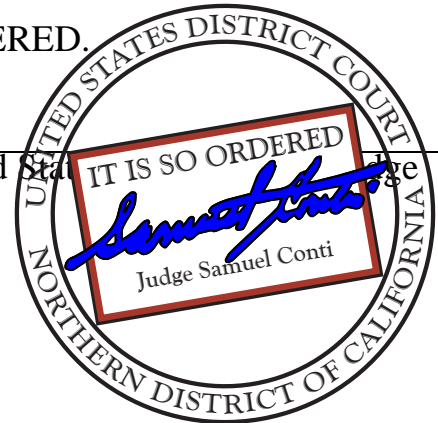
2
3 /s/ Karen Rosenthal

4 Attorneys for Defendant
5 American Express Travel
6 Related Services Company

7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

8 Dated: August 24 , 2006

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
United States



1 Mark F Anderson (SBN 44787)
2 Kemnitzer, Anderson, Barron & Ogilvie LLP
3 445 Bush St, 6th Floor
4 San Francisco, CA 94108
5 Phone: 415.861.2265
6 Fax: 415.861.3151
7
8 Attorneys for Plaintiff

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 HUNG TRAN,

12 Plaintiff,

13 v.

14 AMERICAN EXPRESS TRAVEL
15 RELATED SERVICES COMPANY,
16 INC;
17 EXPERIAN INFORMATION
18 SOLUTIONS, INC. and
19 EQUIFAX INFORMATION
20 SERVICES LLC,

21 Defendants.

Case No. C05 4616 SC

**APPENDIX A TO STIPULATED
PROTECTIVE ORDER**

Dept:
Judge: Honorable Samuel Conti

22 I, _____, hereby acknowledge and declare that:

23 1. I have received a copy of the Stipulated Protective Order in this action.
24 I have carefully read and understand the provisions of the Stipulated Protective
25 Order.

26 2. I will comply with all of the provisions of the Stipulated Protective
27 Order. I will hold in confidence, will not disclose to anyone not qualified under the
28 Stipulated Protective Order, and will use only for purposes of this litigation (and not
for any other purpose, including any business, competitive, or governmental purpose

or function), any CONFIDENTIAL INFORMATION, including the substance and any copy, summary, abstract, excerpt, index or description of such material that is disclosed to me.

3. I will return all CONFIDENTIAL INFORMATION that comes into my possession, and all documents and things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained or from whom I received such material, when requested by such counsel to do so.

4. I understand that if I violate the provisions of the Stipulated Protective Order, I will be subject to sanctions by the Court and the parties, or any one of them, may assert other remedies against me. I hereby submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcement of the Stipulated Protective Order in this action.

5. My address is: _____.

6. My relationship to this case and the Parties thereto is: _____

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____	_____ (Signature) _____ Print Name
--------------	---